

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

IN THE MATTER OF)

ACCESS REFORM TARIFF FILINGS)

97-249

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

REPLY OF ARKANSAS TELEPHONE COMPANY, INC.

Arkansas Telephone Company, Inc. ("Arkansas"), by its attorney, hereby replies to the December 23, 1997, AT&T Corp. ("AT&T") Petition in the above-captioned matter.¹ AT&T has provided neither a factual nor a legal foundation for its request to suspend and investigate Arkansas' tariff. Accordingly, the Commission should dismiss the AT&T Petition, and permit the Arkansas tariff to become effective on January 1, 1998, as filed.

I. BACKGROUND

On December 17, 1997, and in compliance with Section 61.39 of the Rules of the Commission,² Arkansas filed revisions to its F.C.C. Tariff No. 1 ("December 17 Tariff Filing") to implement the directives associated with the removal of Dialed Equipment Minute Weighting from Arkansas' existing local switching rate, and the reallocation of costs within its transport

¹ See In the Matter of Access Reform Tariff Filings, Petition of AT&T Corp. on Rate-of-Return LEC Tariff Filings, filed December 23, 1997 ("AT&T Petition"). This reply is filed pursuant to the directives of the Federal Communications Commission ("Commission"). See In the Matter of Support Material For Carriers to File to Implement Access Charge Reform Effective January 1, 1998, Order, DA 97-2358, released November 7, 1997, Attachment 3.

² 47 C.F.R. § 61.39.

service offerings on a revenue neutral basis.³ On December 23, 1997, AT&T petitioned the Commission to suspend the filings of numerous local exchange carriers, including the Arkansas' December 17 Tariff Filing, and requested that an investigation be undertaken. In its Petition, AT&T inaccurately avers that Arkansas was required to file cost support information with its tariff filing, and, further, incorrectly alleges that this lack of cost support data supports the need for a suspension and investigation of Arkansas' December 17 Tariff Filing.⁴

II. AT&T HAS FAILED TO MAKE THE SHOWINGS REQUIRED BY THE COMMISSION'S RULES TO JUSTIFY THE REQUESTED SUSPENSION

A. ARKANSAS' TARIFF IS *PRIMA FACIE* LAWFUL AND SHOULD NOT BE SUSPENDED.

Section 1.773 of the Commission's Rules provides specifically that Arkansas' December 17 Tariff Filing is to be "considered *prima facie* lawful and will not be suspended by the Commission unless the petition requesting suspension shows that the cost and demand studies . . . [were] not provided upon reasonable request."⁵ Absent this showing, the tariff filing will be presumed *prima facie* lawful, and will not be suspended unless a petitioning party demonstrates each of the following:

- (A) That there is a high probability the tariff would be found unlawful after investigation;
- (B) That any unreasonable rate would not be corrected in a subsequent filing;

³ See generally In the Matter of Access Reform, First Report and Order, CC Docket No. 96-262, FCC 97-158, released May 16, 1997; Order on Reconsideration, FCC 97-247, released July 10, 1997; Second Order on Reconsideration and Memorandum Opinion and Order, FCC 97-368, released October 9, 1997 ("Access Charge Restructure Decisions").

⁴ AT&T Petition at 5.

⁵ 47 C.F.R. § 1.773(a)(1)(iii)(emphasis in original).

- (C) That irreparable injury will result if the tariff filing is not suspended; and
- (D) That the suspension would not otherwise be contrary to the public interest.⁶

With respect to Arkansas' December 17 Tariff Filing, AT&T has not, and cannot, meet these requirements. Accordingly, AT&T's Petition should be dismissed without further consideration. As demonstrated herein, AT&T's claim lacks any factual or legal basis that would warrant further review. Arkansas' December 17 Tariff Filing should be permitted to become effective on January 1, 1998, as filed.

B. ARKANSAS RECEIVED NO REQUEST NECESSITATING THE FILING OF COST SUPPORT INFORMATION.

As a Section 61.39 filing company, Arkansas is required to file cost support information "upon reasonable request by the Commission or interested parties."⁷ Arkansas has not received a request for this information from AT&T. Moreover, there is no basis to suggest, as AT&T presumably does, that the requirements of Section 61.39 were revised by the Commission's November 6, 1997 Tariff Review Plans.⁸ AT&T's failure to request cost support information renders its claims and request for suspension and investigation baseless. AT&T has no standing

⁶ Id.

⁷ 47 C.F.R. § 61.39(b).

⁸ Compare In the Matter of Support Material For Carriers to File to Implement Access Charge Reform Effective January 1, 1998, Tariff Review Plans, DA 97-2345, released November 6, 1997 at ¶¶ 1, 13, 15-16 and AT&T Petition at 5.

to seek the relief it requests due to its failure to comply with applicable Commission Rules.⁹ Accordingly, Arkansas' December 17 Tariff Filing is prima facie lawful and should be permitted to go into effect on January 1, 1998 as filed.

C. ASSUMING FURTHER ANALYSIS IS NECESSARY, AT&T HAS NOT REBUTTED THE PRESUMPTION OF LAWFULNESS CONTAINED IN SECTION 1.773(a)(1)(iii).

Assuming further analysis of AT&T's Petition is necessary, Section 1.773(a)(1)(iii) establishes the conditions under which suspension is warranted. This four-prong test requires petitioners to demonstrate generally that suspension is the only appropriate remedy. AT&T has failed to meet even a single element of this test.

1. AT&T has not shown a high probability that the Arkansas December 17 Tariff Filing is Unlawful.

Arkansas' December 17 Tariff Filing was filed in accordance with Section 61.39 of the Commission's Rules. The proposed rates were established in compliance with this Rule and the Commission's Access Charge Restructure Decisions. AT&T has not demonstrated that the applicable Commission's directives were not followed, especially since AT&T failed to request supporting data. Accordingly, AT&T's claim should be rejected, and, pursuant to Section 1.773(a)(1)(iii)(A), its Petition dismissed.

2. AT&T has not shown that subsequent filings would not correct rates found to be unreasonable.

The Commission's Rules provide that carriers making Section 61.39 filings are to base

⁹ As the Commission is aware, AT&T followed procedures for seeking information from Arkansas in prior filings. See In the Matter of 1997 Annual Access Tariff Charge Filings, Reply of Arkansas Telephone Company, Inc., filed June 26, 1997. Apparently, AT&T chose not to seek such information with respect to Arkansas' December 17 Tariff Filing.

such filings on historical costs and demand. The Commission has found that this methodology "should . . . prevent carriers from implementing excessive rates."¹⁰ The Commission also has noted that, "[a]lthough rates might theoretically be inaccurate because of changed circumstances, they should also be *self-correcting* and thus rate neutral over time because current actuals would be used in subsequent periods to set rates."¹¹ Arkansas complied with these directives and restructured its rates in compliance with the Commission's Access Charge Restructure Decisions. Under the findings of the Small Company Order, therefore, subsequent filings will correct inaccuracies if they exist. AT&T, however, has not attempted to demonstrate that the Commission's Small Company Order pronouncements are not controlling in this matter. Accordingly, pursuant to Section 1.773(a)(1)(iii)(B), AT&T's petition should be dismissed.

3. AT&T will sustain no irreparable injury if Arkansas' revised rates are permitted to go into effect as filed.

AT&T has not demonstrated that it will sustain irreparable injury if Arkansas' revised rates are permitted to go into effect. As demonstrated in Section II.C.2, above, the revised rates, even if they are unreasonable, will be self-correcting over time. AT&T will not suffer irreparable injury. Accordingly, pursuant to Section 1.773(a)(1)(iii)(C), AT&T's Petition should be dismissed.

4. Suspension of Arkansas' December 17 Tariff Filing would be contrary to the public interest.

AT&T does not and cannot show that the requested suspension would further the public

¹⁰ In the Matter of Regulation of Small Telephone Companies, Report and Order, CC Docket No. 86-467, 2 FCC Rcd 3811 (¶ 13)(1987)("Small Company Order").

¹¹ Id. (¶ 12)(emphasis added)(footnote omitted).

interest. Grant of AT&T's Petition would directly contradict the specific requirements of Section 61.39(b) and countenance AT&T's failure to request cost support information from Arkansas. Moreover, from a public policy perspective, granting AT&T's Petition would directly contradict the Commission's established policies and findings made in the Small Company Order, specifically, that the reduced regulatory burden for carriers with 50,000 or fewer access lines and the "self-correcting" nature of rates based on historical costs and demand are in the public interest and should be encouraged. Accordingly, the Commission should reaffirm the policies that underlie the Section 61.39 Rules, and, pursuant to Section 1.773(a)(1)(iii)(D), dismiss the AT&T Petition.

III. CONCLUSION

AT&T has failed to make any showing under the Commission's Rules that would justify suspension and investigation of Arkansas' December 17 Tariff Filing. Accordingly, Arkansas respectfully requests that the Commission dismiss the AT&T Petition and permit Arkansas' December 17 Tariff Filing to become effective January 1, 1998 as filed.

Respectfully submitted,

Arkansas Telephone Company, Inc.

By: Thomas J. Moorman (se)
Thomas J. Moorman
Kraskin & Lesse, LLP
2120 L Street, N.W., Suite 520
Washington, D.C. 20037
Tel: (202) 296-8890
Fax: (202) 296-8893

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CERTIFICATE OF SERVICE

I, Colleen von Hollen, of Kraskin & Lesse, LLP, 2120 L Street, NW, Suite 520, Washington, DC 20037, do hereby certify that on this 29th day of December, 1997, a copy of the foregoing Reply of Arkansas Telephone Company, Inc. was hand-delivered to the following parties:

Colleen von Hollen
Colleen von Hollen

A. Richard Metzger, Chief
Common Carrier Bureau
Federal Communications Commission
1919 M Street, NW, 5th Floor
Washington, DC 20554

Ms. Yolanda Brooks *
AT&T Corp.
295 North Maple Avenue
Basking Ridge, NJ 07920
FAX: (908) 953-6788

Judith A. Nitsche, Chief
Tariff Pricing & Analysis Branch
Common Carrier Bureau
Federal Communications Commission
1919 M Street, NW, Room 518
Washington, DC 20554

International Transcription
Service, Inc.
1919 M Street, NW, Room 246
Washington, DC 20554

Mr. John Scott
Tariff Pricing & Analysis Branch
Common Carrier Bureau
Federal Communications Commission
1919 M Street, NW, Room 518
Washington, DC 20554

Ms. Vienna Jordan
Tariff Pricing & Analysis Branch
Common Carrier Bureau
Federal Communications Commission
1919 M Street, NW, Room 518
Washington, DC 20554

James Schlichting, Chief
Competitive Pricing Division
Common Carrier Bureau
Federal Communications Commission
1919 M St., NW, Room 518
Washington, DC 20554

* Via Facsimile and Regular Mail